

U.S. ARMY

PROCUREMENT POLICY

ALERT BULLETIN

NO. 96-005

May 15, 1996

The enclosed document is forwarded for your information and any necessary implementation in advance of formal publication of a Federal Acquisition Circular (FAC) or Defense Acquisition Circular (DAC). There will be no Department of the Army-level supplementation or implementing instructions.

ENCLOSURE:

DPP Memorandum, Subject: Pricing for Sales of Defense Articles, DAR Tracking Number 96-010, April 30, 1996.

Note: The term "nonrepayable funds" as used in the enclosed DFARS text means funds granted to a foreign government that they are not required to return (i.e., not a loan).

This bulletin is issued by the U.S. Army Contracting Support Agency. Comments or questions should be referred to the Policy and Procedures Division, SFAE-CSA-PP, 5109 Leesburg Pike, Suite 916, Falls Church, Virginia 22041.

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Bulletin 96-005 consists of 3 pages.

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30 APRIL 1996

In reply refer to
DFARS Case: 96-D309
D.L. 96-010

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A) /ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY ASA (RD&A) / SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Pricing for Sales of Defense Articles

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 531A of the FY 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104-107), which requires that sales of defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by the Department of Defense for its own use.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

DFARS Case 96-D309
Interim Rule

PART 225--FOREIGN ACQUISITION

SUBPART 225.73--ACQUISITIONS FOR FOREIGN MILITARY SALES

225.7303 Pricing acquisitions for foreign military sales [(FMS)].

Price foreign military sale contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR Parts 15 and 31 to a foreign military sale contract, however, may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303-1 do not exist, **[except as provided in 225.7303-5,]** recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to--***

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31-205-18 do not apply to such contracts **[except as provided in 225-7303-5]**. The allowability of IR&D/B&P costs on contracts for foreign military sales **[not wholly paid for from funds made available on a nonrepayable basis]** shall be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for **[such]** foreign military sales--***

[225.7303-5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements, as is applicable to acquisition of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements will be allowable under such contracts. Indirect burden rates applicable to such direct costs shall be permitted at the same rates applicable to acquisitions of like items purchased by DoD for its

own use.

(c) A U.S. defense contractor may not recover costs incurred to implement its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed with funds made available on a nonrepayable basis.]